

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

YOLANDA ROSAS

Claimant

VS.

LIFE STYLE STAFFING

Respondent

AND

UNITED WISCONSIN INS. CO.¹

Insurance Carrier

Docket No. 1,059,744

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) requested review of the May 3, 2012, Order entered by Administrative Law Judge Nelsonna Potts Barnes. Tamara J. Collins, of Wichita, Kansas, appeared for claimant. Vincent Burnett, of Wichita, Kansas, appeared for respondent.

The Administrative Law Judge (ALJ) ordered claimant to undergo an independent medical evaluation (IME) by Dr. Sandra Barrett, a neutral physician, the cost of which is to be borne by respondent. The ALJ did not order payment of temporary total disability benefits, nor did she order respondent to provide claimant with medical treatment or payment of any medical expenses. No preliminary benefits of any kind were ordered paid. Conversely, no benefits were denied.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the May 3, 2012, Preliminary Hearing and the exhibits, together with the pleadings contained in the administrative file.

¹ In the body of respondent's Appeal of Preliminary Hearing Order Dated May 3, 2012, respondent identified its insurance carrier as United Heartland.

ISSUES

Respondent requests review of the ALJ's Order, arguing that claimant failed to prove she suffered a workplace injury. Respondent asks that the Board reverse the ALJ's Order and find that claimant is not entitled to workers compensation benefits.

Claimant argues the ALJ has jurisdiction to order a neutral court-ordered IME and that she has proved she sustained an injury or injuries that arose out of and in the course of her employment. Claimant asks the Board to affirm the ALJ's Order.

The issues for the Board's review are: Does the Board have jurisdiction over the issues in this appeal? If so, did the claimant prove she suffered a workplace accident or repetitive trauma injury that arose out of and in the course of her employment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant was working for respondent, a temporary staffing agency, and on February 2, 2012, she was placed at Rubbermaid performing physical labor trimming and stacking doors. She said she worked a 12-hour shift performing repetitive tasks. Her last day at work at Rubbermaid was on February 20, 2012. On February 22, 2012, claimant filed an Application for Hearing claiming injuries to multiple parts of her body including neck, upper back and shoulders caused by repetitively cutting edges of doors and lifting doors. Claimant filed an Application for Preliminary Hearing on March 14, 2012, requesting workers compensation benefits in the form of temporary total disability compensation and medical treatment.

After a preliminary hearing held May 3, 2012, the ALJ ordered claimant be seen by Dr. Sandra Barrett for an IME. Respondent appeals that order.

K.S.A. 2011 Supp. 44-516(a) states in relevant part:

In case of a dispute as to the injury, the director, in the director's discretion, or upon request of either party, may employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct. The report of any such health care provider shall be considered by the administrative law judge in making the final determination.

The ALJ's May 3, 2012, Order does not award claimant medical treatment or any other form of preliminary relief. The ALJ made no findings concerning compensability, *i.e.*, whether claimant sustained an accident injury or repetitive trauma injury that arose out of or in the course of her employment or whether claimant gave respondent timely notice. The Order merely orders an IME to be conducted by Dr. Barrett, a neutral physician. Thus, the

ALJ's Order is neither a preliminary hearing order entered pursuant to K.S.A. 2011 Supp. 44-534a, nor is it a final award. As counsel for the appellant is well aware, the Board has previously held on numerous occasions that an order for an IME is an interlocutory order.² K.S.A. 2011 Supp. 44-551(i)(1) limits the Board's jurisdiction to review "final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge" The ALJ's Order referring claimant for an IME is interlocutory in nature. In fact, the Order specifically provides that "[t]he parties shall return to court for further proceedings after receipt of the Independent Medical Examination report."³

Respondent's request for Board review of the ALJ's Order is premature. The Order is not a final order that can be reviewed at this stage of the proceedings pursuant to K.S.A. 2011 Supp. 44-551. That statute limits the Board's jurisdiction to review of "final orders." It does not grant authority to review interlocutory orders. Furthermore, the Order does not decide an issue that came before the ALJ pursuant to the preliminary hearing statute, K.S.A. 2011 Supp. 44-534a, as preliminary hearing orders are limited to issues concerning the furnishing of medical treatment, the payment of temporary total disability compensation, or the payment of temporary partial disability compensation.

When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.⁴

WHEREFORE, it is the finding, decision and order of the Board that respondent's request to review Administrative Law Judge Nelsonna Potts Barnes' May 3, 2012, Order is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

² See, e.g., *Ellis v. T Mobile USA, Inc.*, Docket No. 1,010,151, 2003 WL 22150567 (Kan. WCAB Aug. 14, 2003); *Scott v. Total Interiors*, No. 244,761, 2000 WL 1134444 (Kan. WCAB July 28, 2000); *Kitchen v. Luce Press Clippings, Inc.*, No. 228,213, 1999 WL 288895 (Kan. WCAB Apr. 2, 1999); see also *Johnson v. Siding Supply, Inc.*, Docket Nos. 211,043 & 220,243, 1998 WL 381540 (Kan. WCAB June 29, 1998).

³ ALJ Order (May 3, 2012) at 2.

⁴ See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).

Dated this _____ day of June, 2012.

BOARD MEMBER

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Nelsonna Potts Barnes, Administrative Law Judge